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East Brunswick, NJ 08816  
732-390-0166  
Attorneys for Defendants Ellman Savings Irrevocable Trust  
And Jeffrey Levitin

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

-----X  
AMERICAN GENERAL LIFE INSURANCE  
COMPANY,

08-cv-05364 (MLC) (TJB)

Plaintiff,

-against-

ELLMAN SAVINGS IRREVOCABLE TRUST,  
JEFFREY LEVITIN, ISRAEL KUGIELSKY,  
CHAIM RUBIN and JOHN DOES 1-10,

AMENDED ANSWER TO FIRST  
AMENDED COMPLAINT WITH  
COUNTERCLAIM AND JURY  
DEMAND

Defendants.

-----X

Defendants herein, Ellman Savings Irrevocable Trust ("The Trust") and Jeffrey Levitin by their attorneys, Schindel, Farman, Lipsius, Gardner & Rabinovich LLP, as and for their Amended Answer to plaintiff's First Amended Complaint, state as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the complaint.

5. Deny the truth of the allegations contained in paragraph 5 of the complaint.
6. Deny the truth of the allegations contained in paragraph 6 of the complaint.
7. Deny the truth of the allegations contained in paragraph 2 of the complaint.
8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.
9. Deny the truth of the allegations contained in paragraph 9 of the complaint.
10. Deny the truth of the allegations contained in paragraph 10 of the complaint.
11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the complaint.
12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the complaint.
13. Deny the truth of the allegations contained in paragraph 13 of the complaint
14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint.
15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the complaint.
16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.
17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.
18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the complaint.
19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the complaint.

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27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the complaint.

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56. Admit the truth of the allegations contained in paragraph 56 of the complaint.

57. Admit the truth of the allegations contained in paragraph 57 of the complaint.
58. Admit the truth of the allegations contained in paragraph 58 of the complaint.
59. Deny the truth of the allegations contained in paragraph 59 of the complaint.
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173. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 173 of the complaint.

174. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 174 of the complaint.

175. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 175 of the complaint.

176. Repeat, reiterate and reallege their responses to paragraphs 1 through 176 hereof as though fully set forth herein.

177. Deny the truth of the allegations contained in paragraph 177 of the complaint.

178. Deny the truth of the allegations contained in paragraph 178 of the complaint.

179. Deny the truth of the allegations contained in paragraph 179 of the complaint.

180. Deny the truth of the allegations contained in paragraph 180 of the complaint.

181. Deny the truth of the allegations contained in paragraph 181 of the complaint.

182. Deny the truth of the allegations contained in paragraph 182 of the complaint.

183. Deny the truth of the allegations contained in paragraph 183 of the complaint.

184. Deny the truth of the allegations contained in paragraph 184 of the complaint.

185. Deny the truth of the allegations contained in paragraph 185 of the complaint.

186. Deny the truth of the allegations contained in paragraph 186 of the complaint.

187. Repeat, reiterate and reallege their responses to paragraphs 1 through 187 hereof as though fully set forth herein.

188. Deny the truth of the allegations contained in paragraph 188 of the complaint.

189. Deny the truth of the allegations contained in paragraph 189 of the complaint.

190. Deny the truth of the allegations contained in paragraph 190 of the complaint.

191. Deny the truth of the allegations contained in paragraph 191 of the complaint.

192. Deny the truth of the allegations contained in paragraph 192 of the complaint.

- 193. Deny the truth of the allegations contained in paragraph 193 of the complaint.
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- 197. Deny the truth of the allegations contained in paragraph 197 of the complaint.
- 198. Repeat, reiterate and realleges their responses to paragraphs 1 through 198 hereof as though fully set forth herein.

- 199. Deny the truth of the allegations contained in paragraph 199 of the complaint.
- 200. Deny the truth of the allegations contained in paragraph 200 of the complaint.
- 201. Deny the truth of the allegations contained in paragraph 201 of the complaint.
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- 210. Deny the truth of the allegations contained in paragraph 210 of the complaint.
- 211. Repeat, reiterate and reallege their responses to paragraphs 1 through 211 hereof as though fully set forth herein.

- 212. Deny the truth of the allegations contained in paragraph 212 of the complaint.
- 213. Deny the truth of the allegations contained in paragraph 213 of the complaint.
- 214. Deny the truth of the allegations contained in paragraph 214 of the complaint.
- 215. Deny the truth of the allegations contained in paragraph 215 of the complaint.



216. Deny the truth of the allegations contained in paragraph 216 of the complaint.

217. Repeat, reiterate and realleges their responses to paragraphs 1 through 217 hereof as though fully set forth herein.

218. Deny the truth of the allegations contained in paragraph 218 of the complaint.

219. Deny the truth of the allegations contained in paragraph 219 of the complaint.

220. Deny the truth of the allegations contained in paragraph 220 of the complaint.

221. Repeats, reiterates and realleges its responses to paragraphs 1 through 221 hereof as though fully set forth herein.

222. Deny the truth of the allegations contained in paragraph 222 of the complaint.

223. Deny the truth of the allegations contained in paragraph 223 of the complaint.

224. Deny the truth of the allegations contained in paragraph 224 of the complaint.

225. Deny the truth of the allegations contained in paragraph 225 of the complaint.

226. Deny the truth of the allegations contained in paragraph 226 of the complaint.

227. Repeat, reiterate and realleges their responses to paragraphs 1 through 227 hereof as though fully set forth herein.

228. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 228 of the complaint.

229. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 229 of the complaint.

230. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 230 of the complaint.

231. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 231 of the complaint.

232. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 232 of the complaint.

233. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 233 of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

234. Plaintiff has failed to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

235. The American General Life Insurance Company policy of life insurance on the life of Ellman ("The Policy") was issued in violation of the Insurance Law of New Jersey and/or New York and the language relied upon by Plaintiff to rescind the policy must be struck.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

236. Plaintiff has wrongfully rescinded the Policy.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

237. Plaintiff has breached its duty of good faith.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

238. This court should dismiss the action as the court is asked to solely address issues of state law which are unsettled and therefore are best heard in a state court in accordance with the holdings of the United States Court of Appeals for the Third Circuit, *State Auto Ins. Companies v. Summy*, 234 F.3d 131(3<sup>rd</sup> Cir. 2000)

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

239. Plaintiffs have alleged that the Applications for the Policies contain misrepresentations.

240. Any misrepresentation on the applications did not affect the judgment of the underwriter in fixing the rate of premium charged by plaintiff and, therefore any misrepresentation is immaterial.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

241. Any allegations made by plaintiff as to material misrepresentations on the application, to which defendant Deny, were made by plaintiff's own agents.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

242. Plaintiff has waived the right to rescind the policies.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

243. Plaintiff has waived its right of rescission by engaging, and continuing to engage in a course of conduct which clearly manifests its intent to continue coverage.

244. Plaintiff has retained premium, continues to bill the insured for premium, accepted payment based on the billing, issued statements to the insured stating the value of the policy and paying commissions to agents after it had knowledge or should have knowledge of the alleged misrepresentations.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

245. Plaintiff failed to tender the premium, plus interest, and therefore is estopped from rescission.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

246. The application for the policy was not attached to the policy when delivered and is therefore inadmissible.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

247. The action is untimely and violated the statute of limitations, incontestability statute and/or contestability clause of the policy.

**COUNTER-CLAIM – (FRAUD/BAD FAITH)**

248. Defendant, The Trust, is a trust created under the laws of the State of New York wherein Irving Ellman was the Grantor and Jeffrey Levitin, Esq. was the Trustee.

249. Plaintiff, American General Life Insurance Company (“American General”), at all times relevant was and is a life insurance company with its home office located at 2727-A Allen Parkway, Houston, Texas, 77019.

250. On or about March 14, 2006, American General issued insurance policy number UM0030862L (the “American General policy”) insuring the life of Irving Ellman for \$10 million dollars.

251. Irving Ellman passed away of natural causes on May 21, 2008.

252. American General received all premiums due as of the date of death of Irving Ellman.

253. At the time of Mr. Ellman’s death on May 21, 2008, the American General policy was in full force and effect.

254. On May 28, 2008, the Trust filed a notice of claim with American General.

255. At the time of Mr. Ellman's death on May 21, 2008, and at the time the claim was filed with American General, days later, on May 28, 2008, more than two years had elapsed since the American General policy.

256. At the time of Mr. Ellman's death on May 21, 2008, and at the time the claim was filed with American General on May 28, 2008, the policy was no longer contestable by American General.

257. To date, American General has refused to pay the Trust's claim.

258. For years, American General sought to write high value policies to elderly individuals because of the extremely high premiums associated with such policies. Besides generating a high cash flow, these elderly policies were extremely profitable for American General because often, the increasing life expectancy made it difficult for insureds to continue paying the high premiums until the benefits become due. When these policies lapsed for failure to pay premiums, American General would gain a windfall as the policies would expire and the insurer would be entitled to keep all the past paid premiums.

259. As a result, American General underwriters ignored the analysis of their own actuaries and underwriting guidelines and wrote high value policies even if such policies were actuarially deficient.

260. In the last few years, the investment institutions saw this phenomenon as a significant opportunity for expansion. The financial institutions, including those funded by AIG, American General's parent company, purchased these actuarially deficient elderly policies in volume and continued to pay premiums until the death benefits became due. Since these policies were written with the lapse rate in mind, and the policies were no longer lapsing, the investors saw tremendous profits while the life insurers began to suffer financially.

261. American General, counting on many of these high premium policies to lapse, was now forced to keep-up their end of the contract.

262. As a result, American General began to aggressively litigate the elderly policies and hoped that post-issuance judicial underwriting would offset the failures of its pre-issuance insurance underwriting.

263. Even though American General cared not at all for the financial condition of the insured when the policy was written, as that information does not at all increase or decrease the likelihood of death, American General fraudulently began alleging that the financial information in applications were materially misrepresented as a pretext to rescind policies.

264. American General, at all times, was aware of the life settlement market and, in fact, for many years actively pursued the market.

265. Upon information and belief, American General pursued the market by ignoring its own underwriting guidelines concerning financial condition of the insured.

266. American General realized that catering to the life settlement market created opportunities for American General to collect colossal premiums and substantially increase its cash flow and market share.

267. With regard to the American General policy upon the life of Ellman, American General was actually aware of the alleged misrepresentations and yet American General continued to accept premium payments on the policy.

268. Upon information and belief, at the time American General issued the policy at issue, the financial condition of the insured was not material to its underwriting.

269. Upon information and belief, American General would have issued the Ellman policy even had it known of the alleged misrepresentations at the time of the application.

270. Ellman, the insured, was a New York resident.

271. The trustee of the Trust is a New York resident.

272. American General refuses to return the premiums paid to the Trust upon rescission of the policy.

273. As a result of the above, American General has acted fraudulently or in bad faith.

274. The Trust has been monetarily damaged in an amount to be determined at trial.

**WHEREFORE**, defendants, Ellman Savings Irrevocable Trust and Jeffrey Levitin respectfully requests that this Court dismiss the first amended complaint filed in this action against it and grant defendants' counterclaims, together with the costs and disbursements, including reasonable attorneys' fees and expenses.

Dated: March 23, 2010

SCHINDEL, FARMAN, LIPSIOUS,  
GARDNER & RABINOVICH LLP  
Attorneys for Defendants  
Ellman Savings Irrevocable Trust and  
Jeffrey Levitin

By: 

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732-390-0166  
Our File No.: 4206.0002

**JURY DEMAND**

Defendants, Ellman Savings Irrevocable Trust and Jeffrey Levitin, demand trial by jury on all issues triable by a jury.

Dated: March 23, 2010

SCHINDEL, FARMAN, LIPSIOUS,  
GARDNER & RABINOVICH LLP  
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